

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 906 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

STATE OF GUJARAT

Versus

BRAHAMAN AMNIKLAL GORDHAN

Appearance:

MR.M.A.BUKHARI,ADDL.PUBLIC PROSECUTOR for Petitioner
MR RD DAVE for Respondent No. 1
UNSERVED for Respondent No. 9
Rest of the respondents served.

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 26/06/96

ORAL JUDGEMENT

This appeal arises out of the judgment and order of acquittal dated July 17, 1990, passed by the learned Judicial Magistrate, First Class at Vanthali in Criminal Case No.850/86. By the impugned order of acquittal, the

learned Magistrate acquitted the respondent-accused of the offences under sections 4 and 5 of the Bombay Prevention of Gambling Act, 1887 (hereinafter referred to as "the Gambling Act").

Shortly stated, the prosecution case is that the accused No.1, Ramniklal Gordhan, was indulging in gambling activities in the premises in his possession at Vanthali. The said house was, therefore, raided and the accused Nos.2 to 11 were arrested with playing cards, money and such other articles of gambling. All the accused persons were, therefore, charge-sheeted for the offences under sections 4 and 5 of the Gambling Act, alleging that the accused No.1 kept a common gaming house and accused Nos.2 to 11 were found in the premises of accused No.1, being common gaming house, and they were found gambling, in contravention of the provisions of sections 4 and 5 of the Gambling Act.

The accused pleaded not guilty.

The learned Magistrate, having recorded the evidence of the prosecution witnesses, who were brought before the Court, ordered to acquit the accused persons. The learned Magistrate recorded that inspite of giving sufficient opportunity to the prosecution to bring the witnesses, the prosecution-witnesses were not kept present. P.W.1, Virendra Narandas, is said to be a Panch witness at the time of the raid, was examined at Exh.46. He did not support the prosecution-case. The prosecution did not examine the other Panch witness. P.W.1, Virendra Narandas, was declared hostile. Thus, the Panchnama is not proved. The prosecution examined P.W.2, Raghuvir Singh at Exh.50, and another witness, Narmada Shankar at Exh.52. As regards the premises in question, a certificate was produced at Exh.55 according to which the premises belonged to one Gopal Mulji.

The learned Magistrate has recorded that inspite of the repeated issuance of summonses to the complainant, he did not remain present. The complaint was also silent with regard to the boundaries and other particulars as to the location of the premises wherein the gambling was alleged to have been played. Having regard to all these facts and evidence on record, the learned Magistrate has rightly concluded that the prosecution case was not proved beyond reasonable doubt. At the time of the raid, the accused No.1 was not present as per the Panchnama.

Mr.M.A. Bukhari, the learned Addl. Public
Prosecutor appearing for the appellant-State, has not
been able to assail the aforesaid finding recorded by the
learned Magistrate. There is no substance in the appeal.

In the above view of the matter, the appeal fails
and is hereby dismissed.
